

**SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY**

SUBJECT: Catherine Martin – Request to Satisfy and Release SHIP and CDBG Mortgages
(Staff recommends denial).

REQUESTED ACTION: Deny request to satisfy and release SHIP and CDBG mortgages.

☐ Work Session (Report Only)

DATE OF MEETING: 6/28/11

☒ Regular Meeting

☐ Special Meeting

CONTRACT: ☒ N/A

Vendor/Entity: _____

Effective Date: _____

Termination Date: _____

Managing Division / Dept: _____

Planning & Development/Housing

BUDGET IMPACT:

☐ Annual

FUNDING SOURCE: _____

☐ Capital

EXPENDITURE ACCOUNT: _____

☒ N/A

HISTORY/FACTS/ISSUES:

At the June 14, 2011, Board meeting, Mrs. Catherine Martin approached the Board under Public Input and requested that the Board satisfy and release the two (2) mortgages held by the County on her property. As requested by the Board, Mr. Angeliadis, County Attorney, and Mr. Cornelius, Director of Planning & Development, reviewed the issue and related documents and submit the following for the Board's consideration:

In 2009, the County, through the Housing Department, constructed a replacement home for Mrs. Martin and her now deceased husband. The financing of the construction of the replacement home was through funding by the State Housing Initiatives Program (SHIP) and Community Development Block Grant (CDBG). The SHIP funding was \$46,040.85 and the CDBG funding was \$25,000.

The County recorded two mortgages on the property. Both mortgages are dated May 13, 2009. Both mortgages are deferred payment mortgages and require no payment by Mrs. Martin as long as she conforms to the requirements of the mortgages.

The first mortgage is related to the SHIP funding (recorded Book 2177; Page 498). The SHIP mortgage is a deferred payment mortgage for 10 years. The mortgage amount reduces by 10% each year and at the end of the 10th year the mortgage is satisfied with no payment from Mrs. Martin. However, if Mrs. Martin sells the property prior to the end of the 10th year, then Mrs. Martin must pay the County the proportionate share of the outstanding balance at the time of sale. For example, if Mrs. Martin were to sell the property in June 2011, then Mrs. Martin would have to pay the County \$36,848.68 (80% of the original value). The mortgage provides that if Mrs. Martin defaults or breaches the mortgage, then the full amount (\$46,040.85) is due to the County.

The second mortgage is related to the CDBG funding (recorded in Book 2077; Page 714). The CDBG mortgage is a deferred payment mortgage of 5 years. The mortgage amount reduces by 20% each year and at the end of the 5th year the mortgage is satisfied with no payment from Mrs. Martin. However, if Mrs. Martin defaults on the mortgage (i.e. selling prior to the 5 year period), then Mrs. Martin is responsible for the proportionate share of the outstanding balance at the time of default. For example, if Mrs. Martin were to sell the property in June 2011, then Mrs. Martin would have to pay the County \$15,000 (60% of the original value).

At the BOCC meeting last night Mrs. Martin asked the Board to fully satisfy and release the mortgages so she can sell the property and use the proceeds to move. The mortgages do not preclude her from selling the property but simply require that she make the appropriate payments to the County as described in the mortgages (i.e. \$51,848.68 - based on a June 2011 sale). Staff does not recommend that the Board fully release Mrs. Martin from the requirements of the mortgages. Doing so would essentially provide Mrs. Martin with \$71,040.85 in unconstrained cash for any purpose she desires. This is inconsistent with the purpose of the SHIP and CDBG funding. The purpose of the funding and deferred mortgages was to provide Mrs. Martin, and her husband at the time, a safe and decent home based on income guidelines. It was not to provide Mrs. Martin with cash, during the term of the mortgages, for her unconstrained use.

In addition, Mrs. Martin's home is located on approximately 25 acres, according to Property Appraiser records. If Mrs. Martin is in need of cash, she has the option of splitting off a vacant 10 acre tract from the 25 acres and selling it. There is language in the SHIP mortgage that states that the sale of all or any part of the Property results in a default and the mortgage becomes due. The CDBG has language that states if the property is sold then it is in default and the mortgage becomes due. Mrs. Martin could sell 10 acres but she would then have to pay the County the \$36,000 for SHIP and \$15,000 for CDBG (assuming sale in June 2011).

There are many families in the County that have received funding from SHIP and/or CDBG to provide for safe and decent housing. Many of these families face hardships. Forgiving Mrs. Martin's mortgages would set a dangerous precedent. When a family agrees to accept the Affordable Housing Funding they also take on the obligations related to that funding.

Mrs. Martin's issues with her son are a separate issue from the issue of the mortgages and should be dealt with in the appropriate manner as stated by Mr. Arnold at the June 14, 2011, Board meeting.

It is staff's opinion that the early satisfaction and release of mortgages is not in the best interest of the County, the County's affordable housing program; and it is not equitable to other clients of the Housing Department under the same mortgage obligations as Mrs. Martin.

Consequently, staff recommends that the Board deny the request made by Mrs. Martin at the June 14, 2011, Board meeting.

For the Board's information, attached are the two recorded mortgages and emails between Mr. Cornelius and Mr. Angeliadis regarding this issue.

This instrument prepared by:
and return to: Kathy Young ✓
Housing Department
910 North Main Street, Suite 308
Bushnell, FL 33513
Telephone: (352) 793-0272
Deferred Payment Mortgage

SUMTER COUNTY, FLORIDA
GLORIA HAYWARD, CLERK OF CIRCUIT COURT
12/17/2009 02:16:02PM
MORTGAGE
DOC \$161.35

PAGE 1 OF 4
B-2144 P-498

2009 34424 ✓



Board of Sumter County Commissioners
State Housing Initiatives Partnership (SHIP)

Rec 35.50
Doc 161.35
196.85

THIS MORTGAGE made and executed this 13th day of May, 2009, by Catherine Martin-Silvia, hereinafter referred to as the "Borrower(s)," in favor of the **Sumter County Board of Commissioners**, with its address at 910 North Main Street, Bushnell, Florida 33513, hereinafter referred to as the "County."

WHEREAS, Borrower has applied to the County under the County's SHIP Program for a Deferred Payment Loan to assist with expenses incident to the rehabilitation or replacement of the Property hereinafter described in the amount of Forty Six Thousand Forty Dollars And Eighty Five Cents (\$46,040.85), hereinafter referred to as the "Loan"; the Borrower is the head of a household of one or more persons who intend to reside in the Property; the Borrower's total Household Income at the time of Borrower's application for the Loan is less than Eighty Percent (80%) of Sumter County's median family income, adjusted for family size, as published by the Florida Housing Finance Agency; the Borrower is eligible to participate in the County's SHIP Program for Deferred Payment Loan assistance; and the County has agreed to extend and has extended a loan to the Borrower pursuant to said program; and

WHEREAS, the County has granted said Deferred Payment Loan to the Borrower in the principal amount of Forty Six Thousand Forty Dollars And Eighty Five Cents (\$46,040.85), which indebtedness is evidenced by Borrower's Promissory Note of even date herewith, hereinafter referred to as the "Note," a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

TO SECURE to the County the repayment of the indebtedness evidenced by the Note; the payment of all other sums advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of the Borrower herein contained, the Borrower does hereby mortgage, grant and convey to the County the following described property located in the County of Sumter, State of Florida:

West 3/4 of the Northwest 1/4 of the Northwest 1/4 lying North and East of CL GUM SLOUGH, LESS W 30 feet, LESS C-476 right of way, AND North 100 feet of the West 3/4 of SW 1/4 of the NW 1/4 lying East of CL GUM SLOUGH

TOGETHER with all the improvements now or hereafter erected on the residence or mobile, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property encumbered by this Mortgage; and all of the foregoing, together with said property, are herein referred to as the "Property."

BORROWER COVENANTS, represents and warrants to the County and its successors and assigns that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record.

BORROWER FURTHER COVENANTS and agrees with the County as follows:

1. Payment. The borrower shall promptly pay when due the indebtedness evidenced by the Note; provided, that no payments whatsoever are required so long as:

a. The Property continues to be owned and occupied by the Borrower(s) as Borrowers' principal place of residence; or, the Property is owned and occupied by a person or persons who meet the eligibility requirements for this SHIP assistance and are approved by the Housing Services Department in advance, and

b. The Borrower(s) perform each and every covenant, condition and provision of this Mortgage required to be performed by Borrower(s).

2. That in the event the Property repaired or replaced ceases to be owned and occupied by the Borrower(s) or any other person(s) who meet(s) the limited income requirements of very-low-income or low-income as defined by the Florida Housing Finance Agency and are approved by the Housing Services Department in advance, or, if the Borrower defaults on any other material provision of this Mortgage, all moneys spent for labor and materials on such repair or replacement, shall be recaptured by the County in accordance with the following schedule:

a. If such change in ownership and/or occupancy occurs during the first year after such rehabilitation or replacement are substantially completed, the County shall recapture One Hundred Percent (100%) of the total funds expended for labor and materials.

b. If such change in ownership and/or occupancy occurs during the second year after such rehabilitation or replacement are substantially completed, the County shall recapture Ninety Percent (90%) of the total funds expended for labor and materials.

c. If such change in ownership and/or occupancy occurs during the third year after such rehabilitation or replacement are substantially completed, the County shall recapture Eighty Percent (80%) of the total funds expended for labor and materials.

d. If such change in ownership and/or occupancy occurs during the fourth year after such rehabilitation or replacement are substantially completed, the County shall recapture Seventy Percent (70%) of the total funds expended for labor and materials.

e. If such change in ownership and/or occupancy occurs during the fifth year after such rehabilitation or replacement are substantially completed, the County shall recapture Sixty Percent (60%) of the total funds expended for labor and materials.

f. If such change in ownership and/or occupancy occurs during the sixth year after such rehabilitation or replacement are substantially completed, the County shall recapture Fifty Percent (50%) of the total funds expended for labor and materials.

g. If such change in ownership and/or occupancy occurs during the seventh year after such rehabilitation or replacement are substantially completed, the County shall recapture Forty Percent (40%) of the total funds expended for labor and materials.

h. If such change in ownership and/or occupancy occurs during the eighth year after such rehabilitation or replacement are substantially completed, the County shall recapture Thirty Percent (30%) of the total funds expended for labor and materials.

i. If such change in ownership and/or occupancy occurs during the ninth year after such rehabilitation or replacement are substantially completed, the County shall recapture Twenty Percent (20%) of the total funds expended for labor and materials.

j. If such change in ownership and/or occupancy occurs during the tenth year after such rehabilitation or replacement are substantially completed, the County shall recapture Ten Percent (10%) of the total funds expended for labor and materials.

k. After the end of the Tenth year following the substantial completion of the rehabilitation or replacement there shall be no recapture by the County.

3. That neither Borrowers, nor any members of Borrowers' household, nor a guest or other person under Borrowers' control, shall engage in any criminal activity, including drug-related criminal activity, on or near the premises benefited by SHIP assistance, or engage in any acts of violence.

4. That borrowers will promptly cooperate with representatives of the Housing Services Department in verifying eligibility status and/or providing such additional information as may be required by the County at any time and from time to time during the term of this mortgage.

5. Prior Mortgages and Deeds of Trust; Charges; Liens. The Borrower shall perform all of the Borrower's obligations under the First Mortgage and any other mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including the Borrower's covenants to make payments when due. The Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage.

6. Hazard Insurance. The Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as the County may require and in such amounts and for such periods as the County may require. The insurance carrier providing the insurance shall be chosen by the Borrower subject to approval by the County; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to the County and shall include a standard mortgage clause in favor of, and in a form acceptable to the County. The County shall have the right to hold the policies and renewals thereof, subject to the terms of the First Mortgage and any other mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage. In the event of loss, the Borrower shall give prompt notice to the insurance carrier and to the County. The County may make proof of loss if not made promptly by the Borrower. If the Property is abandoned by the Borrower, or if the Borrower fails to respond to the County within thirty (30) days from the date notice is mailed by the County to the Borrower that the insurance carrier offers to settle a claim for insurance benefits, the County is authorized to collect and apply the insurance proceeds at the County's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

7. Preservation and Maintenance of Property: The Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property

8. Protection of County's Security. If the Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects the County's interest in the Property, then the County, at its discretion, may disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect the County's interest in the Property. Any amounts disbursed by the County pursuant to this Paragraph 8, with interest thereon, at the rate of twelve per cent (12%) per annum, shall become additional indebtedness of the Borrower secured by this Mortgage. Unless the Borrower and the Lender agree to other terms of payment, such amounts shall be payable upon notice from the County to the Borrower requesting payment thereof. Nothing contained in this Paragraph 8 shall require the County to incur any expense or take any action hereunder.

9. Inspection. The County may make or cause to be made reasonable entries upon and inspections of the Property; provided that the County shall give the Borrower notice prior to any such inspection specifying reasonable cause therefore related to the County's interest in the property.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to the County, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

11. Borrower Not Released; Forbearance By County Not a Waiver. Extension of the time for payment or modification of the sums secured by this Mortgage granted by the County to any successor in interest of the Borrower shall not operate to release, in any manner, the liability of the original Borrower or the Borrower's successors in interest. The County shall not be required to commence proceedings against such successor or refuse to extend time for payment by reason of any demand made by the original Borrower or the Borrower's successors. Forbearance by the County of any remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability, Co-Signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the County and the Borrower, subject to the provisions of Paragraph 12 hereof. If more than one Borrower executes this Mortgage, all covenants, representations, warranties and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note; (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to the County under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that County and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

13. Notice. Except for any notice required under applicable law to be given in another manner: (a) any notice to the Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail, postage prepaid, addressed to the Borrower at the Property Address or at such other address as the Borrower may designate by notice to the County as provided herein, and (b) any notice to the County shall be given by certified mail, postage prepaid, to the County's address stated on page 1 hereof, or to such other address as the County may designate by notice to the Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to the Borrower or the County when given in the manner designated herein.

14. Governing Law; Severability; Costs. This Mortgage shall be governed by the laws of the State of Florida, and, to the extent applicable hereto, the laws and regulations of the United States of America. In the event any provision or clause of this Mortgage or Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all such sums to the extent not prohibited by applicable law or limited herein.

15. Transfer of the Property. If all or any part of the Property or any interest in it is sold, transferred, gifted or otherwise conveyed, whether by voluntary act, involuntarily, by operation of law or otherwise, or if the Borrower is divested of title by judicial sale, levy or other proceeding, or if foreclosure action is instituted against the Property, or if the Property is leased or rented, all sums secured by this Mortgage shall immediately become due and payable as provided herein. In such event, the County shall give Borrower Notice of Acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is given as provided in Paragraph 13 hereof within which the Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, the County may invoke any remedies permitted by this Mortgage without further notice or demand on the Borrower.

SUNTER COUNTY, FLORIDA
GLORIA HAYWARD, CLERK OF CIRCUIT COURT
12/17/2009 02:16:02PM
MORTGAGE

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16. Acceleration; Remedies. Except as provided in Paragraph 15 hereof, upon the Borrower's breach of any covenant or agreement of the Borrower in this Mortgage or the First Mortgage, including the covenants to pay when due any sums secured by this Mortgage or any First Mortgage, or in the event that the Borrower shall have made material misrepresentations or material omissions in Borrower's application for a SHIP Loan, the County, at the County's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Prior to acceleration of this Mortgage, the County shall give notice to the Borrower as provided in Paragraph 13, thereby specifying (1) the breach (if the breach is curable); (2) the action required to cure such breach; (3) a date, not less than ten (10) days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding, and sale of the Property. The notice shall further inform Borrower of the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. The County shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, court costs, and cost of documentary evidence, abstracts and title reports.

17. Borrower's Right to Reinstate. Notwithstanding the County's acceleration of the sums secured by this Mortgage due to the Borrower's breach, the Borrower shall have the right to have any proceedings begun by the County to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) the Borrower pays the County all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) the Borrower cures all breaches of any other covenants or agreements of the Borrower contained in this Mortgage; (c) the Borrower pays all reasonable expenses incurred by the County in enforcing the covenants and agreements of the Borrower contained in this Mortgage, and in enforcing the County's remedies as provided in Paragraph 16 hereof, including, but not limited to, reasonable attorneys' fees and court costs; and (d) the Borrower takes such action as the County may reasonably require to assure that the lien of this Mortgage, the County's interest in the Property and the Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by the Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

18. Release. Upon payment of all sums secured by this Mortgage, or, at the expiration of ten(10) years after the date of this Mortgage without default by the Mortgagor(s), the County shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

19. Attorneys' Fees. As used in this Mortgage and in the Note, "attorneys' fees" shall include attorneys' fees, if any, incurred in connection with the collection or enforcement of this Mortgage or of the Note, whether or not suit is brought and whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise.

20. State Housing Initiatives Partnership (SHIP); Covenants, Representations of Borrower. The Borrower covenants, represents and warrants to the County that: (a) the Borrower, along with Borrower's family, if any, intends to reside as a household in the Property; (b) the Property is a single-family residence, (c) the Borrower's total family income at the time of its application for the Loan was less than eighty per cent (80%) of the median income for the County as determined by HUD and distributed by the Florida Housing Finance Corporation and adjusted for family size, (d) the Borrower is eligible to participate in the County's Housing Program, and (e) The Borrower agrees to comply with and abide by all applicable laws of the State of Florida; the Florida Administrative Code; Rules and Regulations of the Florida Housing Finance Agency; and Sumter County Ordinances, Rules and Regulations; all as they pertain to the County's Housing Program they have been approved for, as they now exist or may hereafter be amended, during the term of this Mortgage. Request of Notice of Default and/or Foreclosure under Superior Mortgages or Deeds of Trust Borrower and County request the holder of any mortgage, deed of trust or other encumbrance with a lien having priority over this Mortgage to give Notice to County, at its address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, this Mortgage has been executed by the said Borrower(s) on the day and year first above written.

MORTGAGOR(S)

Catherine Martin-Silvia

Catherine Martin-Silvia

Witness

Witness

STATE OF FLORIDA)
COUNTY OF SUMTER)

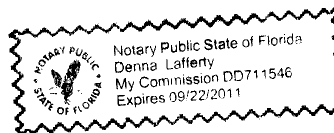
I HEREBY CERTIFY THAT on this day before me, an officer duly qualified to administer oaths, personally appeared Catherine Martin-Silvia, who is/are personally known to me ☒ or presented Fla. Driver's License # _____ as identification [____]; and who executed the foregoing instrument before me.

WITNESS my hand and official in the County and State last aforesaid this 13th day of May, 2009.

Notary Public

Denna Lafferty

My commission expires:



SUMTER COUNTY, FLORIDA
GLORIA HAYWARD, CLERK OF CIRCUIT COURT
12/17/2009 02:16:02PM
MORTGAGE
DOC \$161.35

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B-2144 P-500

2009 34424



Exhibit A

Attached to and incorporated by reference to
Deferred Payment Mortgage from **Catherine Martin-Silvia**, to
Sumter County Board of County Commissioners

PROMISSORY NOTE

From: **Catherine Martin-Silvia**
to Sumter County Board of County Commissioners

Bushnell, Florida

May 13, 2009

\$46,040.85

(date)

FOR VALUE RECEIVED, the undersigned Maker(s) of this Promissory Note promise(s) to pay to the **Sumter County Board of Commissioners**, or order, in the manner hereinafter specified, the principal sum of **Forty Six Thousand Forty Dollars And Eighty Five Cents (\$46,040.85)** WITH NO INTEREST. The said principal shall be deferred for a period of ten years and will decrease annually by 10 % as long as the maker continues to own and occupy the unit.

The Maker(s) shall not be required to make any payment whatsoever unless and until notified in writing that Maker(s) is/are in default under the provisions of the Mortgage to Payee of even date herewith, and given an opportunity to cure said default within fifteen (15) days after said Notice.

If the maker is in default by no longer owning and/or occupying the unit then the balance of the deferred payment mortgage shall at the option of the holder hereof become at once due and collectible without notice, time being of the essence. Failure to pay amount due will result in an interest charge of 12% per annum. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

Each person liable hereon, whether maker or endorser, hereby waives presentment, protest, notice, notice of protest and notice of dishonor and agrees to pay all costs, including a reasonable attorneys' fee, whether suit be brought or not, if, after maturity of this note or default hereunder, counsel shall be employed to collect this note.

Whenever used herein, the terms "holder," "maker," and "payee" shall be construed in the singular or plural as the context may require or admit.

Maker(s)

Catherine Martin-Silvia
Catherine Martin-Silvia

SUMTER COUNTY, FLORIDA
GLORIA HAYWARD, CLERK OF CIRCUIT COURT
12/17/2009 02:16:02PM
MORTGAGE
DOC \$161.35
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B-2144 P-501
2009 34424



Prepared by:
Sumter County Housing Department
910 North Main Street, Suite 308
Bushnell, FL 33513

SUMTER COUNTY, FLORIDA
GLORIA HAYWARD, CLERK OF CIRCUIT COURT
06/01/2009 11:45:02AM
MORTGAGE
DOC \$87.50

PAGE 1 OF 6
B-2077 P-714

2009 14868



**SUMTER COUNTY HOUSING
REHABILITATION/REPLACEMENT PROGRAM
DEFERRED PAYMENT LOAN AGREEMENT**

THIS AGREEMENT, MADE THIS 13th day of May, 2009 by and between Robert Silvia and Catherine Martin-Silvia, his wife, of SUMTER COUNTY hereafter referred to as "Owner-Occupant", and SUMTER COUNTY, a political subdivision of the State of Florida, through its Housing Rehabilitation/Replacement Program, hereinafter referred to as "Housing Rehabilitation/Replacement Program", relates to the real property lying in Sumter County, Florida, described as follows:

(Legal Description - See Exhibit B).

WITNESSETH:

WHEREAS, the Owner-Occupant proposes to finance the cost of rehabilitation/replacement work on the above described property from the proceeds of a Deferred Payment Loan made, or to be made, available to the Owner-Occupant by the Housing Rehabilitation/Replacement Program. The Loan is funded from a Community Development Block Grant through the State of Florida, and

WHEREAS, as long as at least one of the Owner-Occupants who was awarded the Deferred Payment Loan under the Housing Rehabilitation/Replacement Program remains the Owner-Occupant in the five year period from the date hereof, the Deferred Payment Loan does not require repayment.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, it is agreed as follows:

1. The principal amount of the Deferred Payment Loan is (\$25,000.00) Twenty Five Thousand and 00/100 Dollars, receipt of which is hereby acknowledged by owner-occupant(s) and shall be based upon the final approved rehabilitation/replacement Contract price (unless other funds are supplied by the Owner-Occupant, if any).

2. The term of the Deferred Payment Loan for rehabilitating/replacing the above described property shall be five years from the date hereof, at a zero percent (0%) annual rate of interest as reflected in the Promissory Note (See Exhibit A).

3. The Deferred Payment Loan principal amount shall be forgiven in an equal amount each year during the Owner-Occupant's ownership and occupancy of the property for the five year term of the Loan.

Deferred Payment Loan Agreement
Page Two of Six

(Twenty percent of the principal is forgiven each year.) Repayment of the Loan, when required, shall be based upon the annual prorated principal balance for the unexpired term of the Loan.

4. The amount of the Loan as herein provided shall be a lien against the property as described herein. Change orders approved expending government funds shall be reflected on a mortgage modification and recorded after completion of rehabilitation/replacement. Said lien shall be satisfied after the Owner-Occupant has completed the full five year term of this Agreement, or paid to the Housing Rehabilitation/Replacement Program the balance of the Deferred Payment Loan that may become due to the Program as a result of the Owner-Occupant's default of the terms of this Agreement.

5. Sale or transfer of ownership of said property during the five year term of this Agreement shall constitute a default.

6. Upon default, the Deferred Payment Loan principal amount not forgiven by date of default levied hereby shall be payable in full to the Housing Rehabilitation/Replacement Program within thirty (30) days after such default occurs; provided, however, that the governing authority of the municipality may, by resolution, provide for the payment of any lien in not more than ten (10) equal annual installments from the date of said resolution, with interest thereon not exceeding six (6%) percent per annum, on the unpaid balance. Nevertheless, the Owner-Occupant of the property may pay the full amount of principal then remaining unpaid, plus accrued interest only, at any time. All unpaid sums, penalties and interest shall be and remain a lien on the above described real property in favor of the Housing Rehabilitation/Replacement Program and such lien shall have priority over all other liens and encumbrances whatsoever except any liens for federal, state and local taxes due on the property, and any liens (including mortgages) recorded before the recording of the Agreement.

If said lien shall be in default for a period of thirty (30) days, the Housing Rehabilitation/Replacement Program may enforce the same by a suit in equity according to the provisions of the Florida Statutes or other applicable law, and the Owner shall be responsible for all costs incurred in such proceedings, including a reasonable attorney's fee.

7. Failure of the Housing Rehabilitation/Replacement Program to exercise such default options shall not constitute a waiver of such options on any subsequent occasions.

8. **IN THE EVENT THAT THE SOLE OWNER OR ALL OWNERS EXECUTING THIS AGREEMENT ARE DECEASED DURING THE FIVE YEAR TERM THEREOF, THE AGREEMENT SHALL BE CONSIDERED SATISFIED, AND WILL NO LONGER CONSTITUTE A LIEN AGAINST THE PROPERTY.**

9. Hazard Insurance. The Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as the County may require and in such amounts and for such periods as the County may require. The insurance carrier providing the insurance shall

Deferred Payment Loan Agreement
Page Three of Six

be chosen by the Borrower subject to approval by the County; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to the County and shall include a standard mortgage clause in favor of, and in a form acceptable to the County. The County shall have the right to hold the policies and renewals thereof, subject to the terms of the First Mortgage and any other mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage. In the event of loss, the Borrower shall give prompt notice to the insurance carrier and to the County. The County may make proof of loss if not made promptly by the Borrower. If the Property is abandoned by the Borrower, or if the Borrower fails to respond to the County within thirty (30) days from the date notice is mailed by the County to the Borrower that the insurance carrier offers to settle a claim for insurance benefits, the County is authorized to collect and apply the insurance proceeds at the County's option either to restoration or repair of the Property or to the sums secured by this Mortgage. The Owner-Occupant agrees to maintain flood hazard insurance if in a 100 year flood plain, flood insurance on the property for the full replacement value of the rehabilitated/replaced unit. Said flood insurance shall be maintained for the duration of the DPL and shall list the Housing Rehabilitation/Replacement Program as a mortgagee in the loss - payable provision thereof as its interest may appear.

10. If at any time it is determined by the Program that the Owner-Occupant qualified for and received Housing Rehabilitation/Replacement funds under fraudulent pretenses or statements, or by any other means of misrepresentation, the full amount of the Deferred Payment Loan shall immediately become due and payable to the Housing Rehabilitation/Replacement Program by the Owner-Occupant.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year above first written.

Jenna Lafferty
Witness #1

x Robert M. Silvina
Owner-Occupant

Jenna Lafferty
Print Name

Robert M. Silvina
Print Name

Sandie Purvis
Witness#2

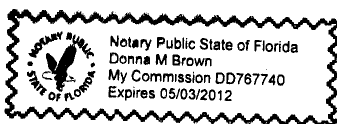
Sandie Purvis
Print Name

STATE OF FLORIDA

Donna Rafferty x Catherine Martin
Witness #1 to Co-owner Occupant Co-Owner-Occupant
Donna Rafferty Catherine Martin
Print Name Print Name
Kathy Young
Witness #2 to Co-owner - Occupant
Kathy Young
Print Name

Before me, the undersigned authority, this 13th day of May, 2009, personally appeared Robert Silvia & Catherine Martin-Silvia of SUMTER COUNTY who acknowledges before me that they freely and voluntarily executed this Agreement for the purpose therein expressed.

(Seal)



Donna M. Brown
Notary Public, State of Florida
Donna M. Brown
Print Name

Personally Known ☒

Produced Identification ☐

Type of I.D. ☐

LOCAL GOVERNMENT AUTHORIZATION OF DEFERRED PAYMENT LOAN AGREEMENT:

Approved this 26th day of May, 2009, by:

By: Garry Breeden
Garry Breeden, Chairman

as Agent for: **BOARD OF COMMISSIONERS
OF SUMTER COUNTY, FLORIDA**


 GLORIA HAYWARD
CLERK OF CIRCUIT COURT
Gloria Hayward
Deputy Clerk

EXHIBIT A

PROMISSORY NOTE

\$25,000.00

Bushnell, Florida

May 13, 2009
(date)

FOR VALUE RECEIVED, the undersigned Maker(s) of this Promissory Note promise(s) to pay to the **Sumter County Board of Commissioners**, or order, in the manner hereinafter specified, the principal sum of **Twenty Five Thousand and 00/100 Dollars (\$25,000.00)** **WITH NO INTEREST**. The said principal shall be deferred for a period of five years and will decrease annually by 20% as long as the maker continues to own and occupy the unit.

The Maker(s) shall not be required to make any payment whatsoever unless and until notified in writing that Maker(s) is/are in default under the provisions of the Mortgage to Payee of even date herewith, and given an opportunity to cure said default within fifteen (15) days after said Notice.

If the maker is in default by no longer owning and/or occupying the unit then the balance of the deferred payment mortgage shall at the option of the holder hereof become at once due and collectible without notice, time being of the essence. Failure to pay amount due will result in an interest charge of 12% per annum. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

Each person liable hereon, whether maker or endorser, hereby waives presentment, protest, notice, notice of protest and notice of dishonor and agrees to pay all costs, including a reasonable attorneys' fee, whether suit be brought or not, if, after maturity of this note or default hereunder, counsel shall be employed to collect this note.

Whenever used herein, the terms "holder," "maker," and "payee" shall be construed in the singular or plural as the context may require or admit.

Maker(s)

Robert Silvia

Catherine Martin-Silvia



EXHIBIT B

Legal Description:

West 3/4 of the Northwest 1/4 of the Northwest 1/4 lying North and East of CL GUM SLOUGH,
LESS W 30 feet, LESS C-476 right of way, AND North 100 feet of the West 3/4 of SW 1/4 of the
NW 1/4 lying East of CL GUM SLOUGH

Cornelius, Brad

From: George Angeliadis [george@hoganlawfirm.com]
Sent: Thursday, June 16, 2011 1:25 AM
To: Cornelius, Brad
Cc: Arnold, Bradley; Lafferty, Denna; Young, Kathy
Subject: Re: Review of Mrs. Martin Mortgages

Understood Brad...thanks for the detailed review. It was very helpful. I agree with you, we should not do anything that is not in the best interests of the citizens of Sumter County. After reviewing your analysis, bartering for the vacant land does not appear to be a viable option for the many reasons detailed in your review of the subject. If the property was configured differently and had potential future value, it may have been a different conclusion.

Thanks again for your analysis. Please call me if you have any questions, or would like to discuss the matter further

GGA

Sent from my Verizon Wireless Phone

----- Reply message -----

From: "Cornelius, Brad" <Brad.Cornelius@sumtercountyfl.gov>
Date: Wed, Jun 15, 2011 11:35 pm
Subject: Review of Mrs. Martin Mortgages
To: "George Angeliadis" <george@hoganlawfirm.com>
Cc: "Arnold, Bradley" <Bradley.Arnold@sumtercountyfl.gov>, "Lafferty, Denna" <Denna.Lafferty@sumtercountyfl.gov>, "Young, Kathy" <Kathy.Young@sumtercountyfl.gov>

George,

The short answer is...

I don't think it is in the best interest of the County, the County's Affordable Housing Program; and it is not equitable to other clients of the Affordable Housing Program under the same mortgage obligations as Mrs. Martin.

Here is the long answer.....

The minimum parcel size, due to the Future Land Use, is 10 acres. Based on Property Appraiser data on the vacant 10 acres adjacent to Mrs. Martin's property to the east, the market value of the 10 acres would be just under \$62,000, which is about \$9K less than the mortgage obligations (\$71K). Given the shape of the property, making a parcel much larger than 10 acres may be difficult without creating an unusual shaped parcel.

As you can see from the attached map, Mrs. Martin's property is heavily wooded. There are only a few areas that are cleared enough to place a home. Otherwise, there may be significant site work to prep a building site on this property. Also, for the County to take title to a portion of the property in exchange for the release of the mortgages the following should occur at the expense of Mrs. Martin:

1. Survey of area to be deeded to County.
2. Appraisal of area to be deeded to County to verify the value of the land is at least the value of the mortgage obligation (\$71K). Appraiser selected by County.
3. Soil/perc tests to determine septic tank suitability.
4. Test well to determine potable water quality.
5. All closing costs to be paid by Mrs. Martin.

In reading the SHIP and CDBG mortgages again, I believe my earlier statement that Mrs. Martin could split off a minimum of 10 acres and sell it to generate cash is partially

correct. There is language in the SHIP mortgage that states that the sale of all or any part of the Property results in a default and the mortgage becomes due. The CDBG has language that states if the property is sold then it is in default and the mortgage becomes due. So Mrs. Martin could sell 10 acres but she would then have to pay the County the \$36K for SHIP and \$15K for CDBG. (assuming sale in June 2011).

Also, language in the SHIP and CDBG mortgages state that in the event of a default the County may call due the mortgage and failure by Mrs. Martin to pay would result in the County foreclosing on the entire property or pursuing a suit in equity, not just a portion of the property.

It is my opinion that the issue Mrs. Martin has with her son is a separate issue from whether or not the County should prematurely satisfy the mortgages or alter the terms of the mortgages.

I think horse trading with Mrs. Martin to relieve her of her mortgage obligations is not in the best interest of the County and the County's Affordable Housing Program; and it is not equitable for the other clients that are under the same mortgage obligations as Mrs. Martin.

Thanks,

Brad C.

Brad Cornelius, AICP, CPM, LEED Green Assoc.
Director, Planning & Development
352.689.4460

-----Original Message-----

From: George Angeliadis [mailto:george@hoganlawfirm.com]
Sent: Wed 6/15/2011 9:36 PM
To: Cornelius, Brad
Cc: Arnold, Bradley; Lafferty, Denna; Young, Kathy
Subject: Re: Review of Mrs. Martin Mortgages

Brad, would a possible option be to accept a portion of the acreage sufficient to cover the value of the mortgages as consideration for releasing Mrs. Martin from the mortgages? This would allow Mrs. Martin the ability to sell the unencumbered home, and would provide the county with land they could sell to recover the grant money, or keep for future home construction through the Affordable Housing Program? Let me know your thoughts.

GGA

Sent from my Verizon Wireless Phone

----- Reply message -----

From: "Cornelius, Brad" <Brad.Cornelius@sumtercountyfl.gov>
Date: Wed, Jun 15, 2011 6:02 pm
Subject: Review of Mrs. Martin Mortgages
To: "george@hoganlawfirm.com" <george@hoganlawfirm.com>
Cc: "Arnold, Bradley" <Bradley.Arnold@sumtercountyfl.gov>, "Lafferty, Denna" <Denna.Lafferty@sumtercountyfl.gov>, "Young, Kathy" <Kathy.Young@sumtercountyfl.gov>

George,

Attached are the two mortgages held by the County on the Martin property. There are no other mortgages on the property that we can locate.

Here is a summary of the issue:

In 2009, the County, through the Affordable Housing Program, constructed a replacement

home for Mrs. Martin and her now deceased husband. The financing of the construction of the replacement home was through funding by the State Housing Initiatives Program (SHIP) and Community Development Block Grant (CDBG). The SHIP funding was \$46,040.85 and the CDBG funding was \$25,000.

The County recorded two mortgages on the property. Both mortgages are dated May 13, 2009. Both mortgages are deferred payment mortgages and require no payment by Mrs. Martin as long as she conforms to the requirements of the mortgages.

The first was related to the SHIP funding (recorded Book 2177; Page 498). The SHIP mortgage is a deferred payment mortgage for 10 years. The mortgage reduces by 10% each year and at the end of the 10th year the mortgage is satisfied with no payment from Mrs. Martin. However, if Mrs. Martin sells the property prior to the end of the 10th year, then Mrs. Martin must pay the County the proportionate share of the outstanding balance at the time of sale. For example, if Mrs. Martin were to sell the property in June 2011, then Mrs. Martin would have to pay the County \$36,848.68 (80% of the original value). The mortgage provides that if Mrs. Martin defaults or breaches the mortgage, then the full amount (\$46K) is due to the County.

The second was related to the CDBG funding (recorded in Book 2077; Page 714). The CDBG mortgage is a deferred payment mortgage of 5 years. The mortgage reduces by 20% each year and at the end of the 5th year the mortgage is satisfied with no payment from Mrs. Martin. However, if Mrs. Martin defaults on the mortgage (i.e. selling prior to the 5 year period), then Mrs. Martin is responsible for the proportionate share of the outstanding balance at the time of default. For example, if Mrs. Martin were to sell the property in June 2011, then Mrs. Martin would have to pay the County \$15,000 (60% of the original value).

At the BOCC meeting last night Mrs. Martin asked the Board to fully satisfy and release the mortgages so she can sell the property and use the proceeds to move. It is my opinion that the mortgages do not preclude her from selling the property but simply require that she make the appropriate payments as described in the mortgages (i.e. \$51,848.68 - based on a June 2011 sale). I do not recommend that the Board fully release Mrs. Martin from the requirements of the mortgages. Doing so would essentially provide Mrs. Martin with \$71,040.85 in unconstrained cash for any purpose she desires. This is inconsistent with the purpose of the SHIP and CDBG funding. The purpose of the funding and deferred mortgages was to provide Mrs. Martin, and her husband at the time, a safe and decent home based on income guidelines. It was not to provide Mrs. Martin with cash, during the term of the mortgages, for her unconstrained use.

In addition, Mrs. Martin's home is located on approximately 25 acres, according to Property Appraiser records. If Mrs. Martin is in need of cash, she has the option of splitting off a vacant 10 acre tract from the 25 acres and selling it.

There are many families in the County that have received funding from SHIP and/or CDBG to provide for housing. Many of these families face hardships. Forgiving Mrs. Martin's mortgages would set a dangerous precedent. When a family agrees to accept the Affordable Housing Funding they also take on the obligations related to that funding.

Mrs. Martin's issues with her son is a separate issue from the issue of the mortgages and should be dealt with in the appropriate manner as stated by Mr. Arnold last night.

Let me know if you have any questions or need more information.

Brad C.

Brad Cornelius, AICP, CPM
Director, Planning & Development
352.689.4460

From: Arnold, Bradley
Sent: Wed 6/15/2011 10:17 AM
To: Cornelius, Brad
Cc: George Angelidas (george@hoganlawfirm.com)
Subject: Review of Mrs. Martin Mortgages

Brad,

Please forward the scanned documents related to Mrs. Martin's commitments and the recorded mortgages (our support) to George with a copy to me.

Bradley

***** Important Notice *****

The Board of Sumter County Commissioners is a public agency subject to Chapter 119 of Florida Statutes concerning public records.

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